

E-Filed On 12/14/06

REPLY
SUSAN WILLIAMS SCANN, ESQ.
Nevada Bar No. 000776
PAUL R. CONNAGHAN, ESQ.
Nevada Bar No. 003229
DEANER, DEANER, SCANN, MALAN & LARSEN
720 South Fourth Street, Suite #300
Las Vegas, Nevada 89101 (702) 382-6911
Attorneys for Plaintiff Binford Medical Developers, LLC

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEVADA

8	In re: USA COMMERCIAL MORTGAGE COMPANY,)	Case No. BK-S-06-10725 LBR Case No. BK-S-06-10726 LBR Case No. BK-S-06-10727 LBR Case No. BK-S-06-10728 LBR Case No. BK-S-06-10729 LBR
9)	
10	<u>Debtor</u>)	
11	In re: USA CAPITAL REALTY ADVISORS, LLC.)	Chapter 11 Jointly Administered Under Case No. BK-S-06-10725 LBR
12)	
13	<u>Debtor</u>)	
14	In re: USA CAPITAL DIVERSIFIED TRUST DEED FUND, LLC.)	Adversary No. 06-01212
15)	
16	<u>Debtor</u>)	Date of Hearing: 12/15/06 Time of Hearing: 9:30a.m.
17)	
18	In re: USA CAPITAL FIRST TRUST DEED FUND, LLC.)	Affects: <input checked="" type="checkbox"/> USA Commercial Mortgage Company <input type="checkbox"/> USA Capital Diversified Trust Deed Fund, LLC <input checked="" type="checkbox"/> USA Capital First Trust Deed Fund, LLC <input type="checkbox"/> USA Securities, LLC <input type="checkbox"/> USA Realty Advisors, LLC <input type="checkbox"/> All Debtors
19)	
	<u>Debtor</u>)	

**REPLY IN FAVOR OF AND OPPOSITION TO USA COMMERCIAL MORTGAGE
COMPANY'S OBJECTION TO MOTION TO TEMPORARILY ALLOW CLAIM OF
BINFORD MEDICAL DEVELOPERS LLC.**

22 COMES NOW, Creditor, BINFORD MEDICAL DEVELOPERS LLC, ("Binford") by and
23 through its attorney, SUSAN WILLIAMS SCANN, ESQ. of the law firm of DEANER, DEANER,
24 SCANN, MALAN & LARSEN, and hereby replies to USA Commercial Mortgage Company's
25 Objection to Motion to Temporarily Allow Claim of Binford Medical Developers LLC For voting
26 purposes.

27 Binford received a Class A-1 Ballot and cast its vote. The question before the Court is
28 whether the claim can be temporarily allowed to count that vote. USA Commercial Mortgage

1 Company (“USACM”) filed an objection to Binford’s Proof of Claim on December 12, 2006, but
2 there is still a necessity for the Court to hear this Motion.

3 Although the Opposition does not state the reason why USACM is objecting to the Proof of
4 Claim, the Objection itself contends that Binford was in breach of the Loan Agreement before
5 USACM's obligation to fully fund the loan arose. Exhibit "C" to the Loan Agreement, the
6 Disbursement Schedule, provides that all but \$62,000.00 of the loan proceeds would have been
7 funded by month seven and all of the loan proceeds by month nine. A copy of that Exhibit is
8 attached hereto as Exhibit "1" and incorporated by reference herein. The loan began funding in
9 September of 2005. Accordingly, by April of 2006, all but \$62,000.00 should have been funded.
10 The remaining \$62,000.00 should have been funded by no later than June, 2006. USACM's
11 bankruptcy occurred on April 13, 2006. Binford was current on its interest through June 1, 2006.
12 Copies of USACM's monthly billing summary for the month of April and May of 2006 are attached
13 hereto as Exhibit "2".

14 As shown by Ken Schmidt's Declaration filed with the original Motion, the failure to fund
15 the remaining \$925,000.00 has had serious consequences for Binford's project. Binford is every bit
16 as much a victim in this case as the Direct Lenders. Binford's vote in the estimated amount shown
17 on its Proof of Claim should be counted.

18 DATED this 14th day of December, 2006

Respectfully Submitted,

**DEANER, DEANER, SCANN,
MALAN and LARSEN**

By:

SUSAN WILLIAMS SCANN, ESQ.
Nevada Bar No. 000776
PAUL R. CONNAGHAN, ESQ.
Nevada Bar No. 003229
720 South Fourth Street, Suite 300
Las Vegas, Nevada 89101
Attorneys for Plaintiff
Binford Medical Developers, LLC

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EXHIBIT 1

EXHIBIT "C"**DISBURSEMENT SCHEDULE**

All advances after the closing are subject to Section 3.2 of the Loan Agreement. Month "X" means "X" months after closing.

<u>MONTH</u>	<u>TOTAL</u>	<u>INTEREST</u>	<u>DRAWS</u>
Close	\$4,250,000	\$65,000	\$4,185,000
Month 1	\$ 233,200	\$ 0	\$ 233,200
Month 2	\$ 335,200	\$49,000	\$ 286,200
Month 3	\$ 638,949	\$54,000	\$ 584,949
Month 4	\$ 759,899	\$61,000	\$ 698,899
Month 5	\$ 768,899	\$70,000	\$ 698,899
Month 6	\$ 542,999	\$72,000	\$ 470,999
Month 7	\$ 783,854	\$67,000	\$ 716,854
Month 8	\$ 42,000	\$42,000	0
Month 9	\$ 20,000	\$20,000	0
Month 10	\$ 0	\$ 0	0
Month 11	\$ 0	\$ 0	0
Month 12	\$ 0	\$ 0	0
Total	\$8,375,000	\$500,000	\$ 7,875,000

EXHIBIT "2"

May-22-2006 06:25 From-USA Capital

T-720 P.003/003 F-672



For questions regarding your statement
please contact us at 1-888-921-8009
or 702-734-2400

4484 S. Pecos Rd.
Las Vegas NV 89121

Interest Contact

Ken Schmidt
Fax: 317-253-7170

Statement Information

Statement Information	
Page Count	1
Statement From - To	5/1/2006 - 5/31/2006
Bill Due Date	6/1/2006
Total Amount Due	\$ 83,398.61

Monthly Billing Summary

Account: Bimford Medical Developers					
Current Interest Due	\$83,398.61	Late Fees	0.00	Extension Fees	0.00
30 Day Late Interest Due	0.00	Exit Fees	0.00		
60 Day Late Interest Due	0.00	Legal Fees	0.00		
90+ Day Late Interest Due	0.00	Service Fees	0.00		

Account Transaction Detail

Transaction Date	Transaction Type	BEGINNING BALANCE	ENDING BALANCE	TRANSACTION AMOUNT
Interest Transactions (last 90 days)				
05/11/2006	Interest Payment			81,412.50
04/21/2006	Interest Adjustment			704.17
04/13/2006	Interest Payment			74,858.33
02/27/2006	Interest Payment			61,425.00
Principal Transactions (last 90 days)				
03/29/2006	Fund	\$6,800,000.00	\$7,450,000.00	650,000.00
03/08/2006	Fund	\$6,300,000.00	\$6,800,000.00	500,000.00

Full Account Summary

Account: Bimford Medical Developers				
Original Loan Amount	Total Loan Balance	IR%	Total Principal Paid To Date	Total Interest Paid To Date **
8,375,000.00	7,450,000.00	13.00%	0.00	0.00
Account Notes :				

**Total Interest Paid to Date will not be calculated until your next statement, and will only reflect interest payments received from April 1, 2005 on.

***** New Wiring Instructions *****

USA Commercial Mortgage Co.
Bank of America

Routing No. 026009593 Account No. 37555 32396

Reference Loan # 286

Apr-23-2006 19:46

From-USA Capital

T-633 P 001/001 F-562



4484 S. Pecos Rd.
Las Vegas NV 89121

Interest Contact

Ken Schmid
Fax: 317-253-7170

For questions regarding your statement
please contact us at 1-888-921-8009
or 702-734-2401

Statement Information

Statement Information	
Page Count	1
Statement From - To	4/1/2006 - 4/30/2006
Bill Due Date	5/7/2006
Total Amount Due	\$ 81,412.50

Monthly Billing Summary

Monthly Billing Summary					
Account: Binford Medical Developers					
Current Interest Due	81,412.50	Late Fees	0.00	Extension Fees	0.00
30 Day Late Interest Due	0.00	Exit Fees	0.00		
60 Day Late Interest Due	0.00	Legal Fees	0.00		
90+ Day Late Interest Due	0.00	Service Fees	0.00		

Account Transaction Detail

Transaction Date	Transaction Type	Beginning Balance	Ending Balance	Transaction Amount
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04/21/2006	Interest Adjustment			704.17
04/13/2006	Interest Payment			74,858.33
02/27/2006	Interest Payment			61,425.00
01/26/2006	Interest Payment			60,251.39
Principal Transactions (last 90 days)				
03/29/2006	Fund	\$6,800,000.00	\$7,450,000.00	650,000.00
03/08/2006	Fund	\$6,300,000.00	\$6,800,000.00	500,000.00
02/10/2006	Fund	\$5,600,000.00	\$6,300,000.00	700,000.00

Full Account Summary

Full Account Summary				
Original Loan Amount	Total Loan Balance	IR%	Total Principal Paid To Date	Total Interest Paid To Date **
8,375,000.00	7,450,000.00	13.00%	0.00	0.00
Account Notes :				

**Total Interest Paid to Date will not be calculated until your next statement, and will only reflect interest payments received from April 1, 2005 on...